

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1123

Introduced by Mines, 18

Read first time January 17, 2006

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Uniform Trust Code;
2 to amend sections 30-3846, 30-3848, 30-3851, and
3 30-38,110, Revised Statutes Cumulative Supplement, 2004,
4 and sections 30-3805 and 30-3849, Revised Statutes
5 Supplement, 2005; to change provisions relating to the
6 code; to define a term; to harmonize provisions; and to
7 repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3805, Revised Statutes Supplement,
2 2005, is amended to read:

3 30-3805 (UTC 105) (a) Except as otherwise provided in the
4 terms of the trust, the Nebraska Uniform Trust Code governs the
5 duties and powers of a trustee, relations among trustees, and the
6 rights and interests of a beneficiary.

7 (b) The terms of a trust prevail over any provision of
8 the code except:

9 (1) the requirements for creating a trust;

10 (2) the duty of a trustee to act in good faith and
11 in accordance with the terms and purposes of the trust and the
12 interests of the beneficiaries;

13 (3) the requirement that a trust and its terms be for the
14 benefit of its beneficiaries, and that the trust have a purpose
15 that is lawful, not contrary to public policy, and possible to
16 achieve;

17 (4) the power of the court to modify or terminate a trust
18 under sections 30-3836 to 30-3842;

19 (5) the effect of a spendthrift provision and the rights
20 of certain creditors and assignees to reach a trust as provided in
21 sections 30-3846 to 30-3852;

22 (6) the power of the court under section 30-3858 to
23 require, dispense with, or modify or terminate a bond;

24 (7) the power of the court under subsection (b) of
25 section 30-3864 to adjust a trustee's compensation specified in the

1 terms of the trust;

2 (8) the duty under subsection (a) of section 30-3878 to
3 keep the qualified beneficiaries of the trust reasonably informed
4 about the administration of the trust and of the material facts
5 necessary for them to protect their interests, and to respond to
6 the request of a qualified beneficiary of an irrevocable trust for
7 trustee's reports and other information reasonably related to the
8 administration of a trust;

9 (9) the effect of an exculpatory term under section
10 30-3897;

11 (10) the rights under sections 30-3899 to 30-38,107 of a
12 person other than a trustee or beneficiary;

13 (11) periods of limitation for commencing a judicial
14 proceeding;

15 (12) the power of the court to take such action and
16 exercise such jurisdiction as may be necessary in the interests of
17 justice;

18 (13) the subject matter jurisdiction of the court and
19 venue for commencing a proceeding as provided in sections 30-3814
20 and 30-3815;

21 (14) the power of a court under subdivision (a)(1) of
22 section 30-3807; and

23 (15) the power of a court to review the action or the
24 proposed action of the trustee for an abuse of discretion.

25 Sec. 2. Section 30-3846, Revised Statutes Cumulative

1 Supplement, 2004, is amended to read:

2 30-3846 (UTC 501) To the extent a beneficiary's interest
3 is not ~~protected by~~ subject to a spendthrift provision, the
4 court may authorize a creditor or assignee of the beneficiary
5 to reach the beneficiary's interest by attachment of present or
6 future distributions to or for the benefit of the beneficiary or
7 other means. The court may limit the award to such relief as is
8 appropriate under the circumstances.

9 Sec. 3. Section 30-3848, Revised Statutes Cumulative
10 Supplement, 2004, is amended to read:

11 30-3848 (UTC 503) (a) In this section, "child" includes
12 any person for whom an order or judgment for child support has been
13 entered in this or another state.

14 ~~(b) Even if a trust contains a spendthrift provision, a~~
15 ~~beneficiary's child, spouse, or former spouse who has a judgment or~~
16 ~~court order against the beneficiary for support or maintenance, or~~
17 ~~a judgment creditor who has provided services for the protection~~
18 ~~of a beneficiary's interest in the trust, may obtain from a court~~
19 ~~an order attaching present or future distributions to or for the~~
20 ~~benefit of the beneficiary.~~

21 ~~(c) A spendthrift provision is unenforceable against a~~
22 ~~claim of this state or the United States to the extent a statute of~~
23 ~~this state or federal law so provides.~~

24 (b) A spendthrift provision is unenforceable against:

25 (1) a beneficiary's child, spouse, or former spouse who

1 has a judgment or court order against the beneficiary for support
2 or maintenance;

3 (2) a judgment creditor who has provided services for the
4 protection of a beneficiary's interest in the trust; and

5 (3) a claim of this state or the United States to the
6 extent a statute of this state or federal law so provides.

7 (c) A claimant against which a spendthrift provision
8 cannot be enforced may obtain from a court an order attaching
9 present or future distributions to or for the benefit of the
10 beneficiary. The court may limit the award to such relief as is
11 appropriate under the circumstances.

12 Sec. 4. Section 30-3849, Revised Statutes Supplement,
13 2005, is amended to read:

14 30-3849 (UTC 504) (a) In this section, "child" includes
15 any person for whom an order or judgment for child support has been
16 entered in this or another state.

17 (b) Except as otherwise provided in subsection (c) of
18 this section, whether or not a trust contains a spendthrift
19 provision, a creditor of a beneficiary may not compel a
20 distribution that is subject to the trustee's discretion, even if:

21 (1) the discretion is expressed in the form of a standard
22 of distribution; or

23 (2) the trustee has abused the discretion.

24 (c) To the extent a trustee has not complied with a
25 standard of distribution or has abused a discretion:

1 (1) a distribution may be ordered by the court to satisfy
2 a judgment or court order against the beneficiary for support or
3 maintenance of the beneficiary's child, spouse, or former spouse;
4 and

5 (2) the court shall direct the trustee to pay to the
6 child, spouse, or former spouse such amount as is equitable under
7 the circumstances but not more than the amount the trustee would
8 have been required to distribute to or for the benefit of the
9 beneficiary had the trustee complied with the standard or not
10 abused the discretion.

11 (d) This section does not limit the right of a
12 beneficiary to maintain a judicial proceeding against a trustee
13 for an abuse of discretion or failure to comply with a standard
14 for distribution.

15 (e) A creditor may not reach the interest of a
16 beneficiary who is also a trustee or cotrustee, or otherwise compel
17 a distribution, if the trustee's discretion to make distributions
18 for the trustee's own benefit is limited by an ascertainable
19 standard. If the trustee's or cotrustee's discretion to make
20 distributions for the trustee's or cotrustee's own benefit is
21 limited by an ascertainable standard, a creditor may not reach or
22 compel distribution of the beneficial interest except to the extent
23 the interest would be subject to the creditor's claim were the
24 beneficiary not acting as trustee or cotrustee.

25 Sec. 5. Section 30-3851, Revised Statutes Cumulative

1 Supplement, 2004, is amended to read:

2 30-3851 (UTC 506) (a) In this section, "mandatory
3 distribution" means a distribution of income or principal which the
4 trustee is required to make to a beneficiary under the terms of the
5 trust, including a distribution upon termination of the trust. The
6 term does not include a distribution subject to the exercise of
7 the trustee's discretion even if (1) the discretion is expressed
8 in the form of a standard of distribution or (2) the terms of the
9 trust authorizing a distribution couple language of discretion with
10 language of direction.

11 (b) Whether or not a trust contains a spendthrift
12 provision, a creditor or assignee of a beneficiary may reach
13 a mandatory distribution of income or principal, including a
14 distribution upon termination of the trust, if the trustee has not
15 made the distribution to the beneficiary within a reasonable time
16 after the designated distribution date.

17 Sec. 6. Section 30-38,110, Revised Statutes Cumulative
18 Supplement, 2004, is amended to read:

19 30-38,110 (UTC 1106) (a) Except as otherwise provided in
20 the Nebraska Uniform Trust Code, on January 1, 2005:

21 (1) the code applies to all trusts created before, on, or
22 after January 1, 2005;

23 (2) the code applies to all judicial proceedings
24 concerning trusts commenced on or after January 1, 2005;

25 (3) the code applies to judicial proceedings concerning

1 trusts commenced before January 1, 2005, unless the court finds
2 that application of a particular provision of the code would
3 substantially interfere with the effective conduct of the judicial
4 proceedings or prejudice the rights of the parties, in which
5 case the particular provision of the code does not apply and the
6 superseded law applies; and

7 (4) an act done before January 1, 2005, is not affected
8 by the code.

9 (b) If a right is acquired, extinguished, or barred
10 upon the expiration of a prescribed period that has commenced to
11 run under any other statute before January 1, 2005, that statute
12 continues to apply to the right even if it has been repealed or
13 superseded.

14 (c) Any reference to the powers authorized under the
15 Nebraska Trustees' Powers Act as such act existed prior to January
16 1, 2005, is deemed to be a reference to the powers authorized under
17 the Nebraska Uniform Trust Code.

18 (d) Subsection (a) of section 30-3838, section 30-3839,
19 ~~subsection (b) of~~ section 30-3848, subsection (c) of section
20 30-3849, and subdivision (b)(1) of section 30-3879 apply only to
21 trusts which become irrevocable on or after January 1, 2005.

22 Sec. 7. Original sections 30-3846, 30-3848, 30-3851,
23 and 30-38,110, Revised Statutes Cumulative Supplement, 2004, and
24 sections 30-3805 and 30-3849, Revised Statutes Supplement, 2005,
25 are repealed.